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ABSTRACT

To be appointed by the President with the advice and concent of the Senate, this new Assistant Secretary would have such duties as the Secretary of Interior assigned, with respect to the conduct of Indian affairs, and would assume the duties of the Commissioner of Indian Affairs. One of his primary responsibilities would be to help guide the implementation of the national policy of Indian self-determination set forth in the Indian Self-Determination Act. This new Assistant Secretary would be able to work full time with the Indians toward the improvement of their socioeconomic conditions and to assist in the development of their full potential, which would benefit both the Indians and the nation. This document presents the texts of these bills; statements of the U.S. Representative from California, the Assistant Secretary for Congressional and Legislative Affairs, and the executive director of the National Congress of American Indians; and the correspondence from the Indian Affairs Subcommittee's chairman, the Assistant Secretary of the Interior, and the Department of the Interior's Under Secretary. (NQ)

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TO PROVIDE FOR AN ADDITIONAL ASSISTANT SECRETARY OF THE INTERIOR RESPONSIBLE FOR INDIAN AFFAIRS

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HEARING

BEFORE THE

SUBCOMMITTEE ON INDIAN AFFAIRS

OF THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

SECOND SESSION

ON

H.R. 4344, H.R. 8536, and H.R. 11258

TO PROVIDE FOR AN ADDITIONAL ASSISTANT SECRETARY OF THE INTERIOR RESPONSIBLE FOR INDIAN AFFAIRS

HEARING HELD IN WASHINGTON, D.C.
MARCH 4, 1976

Serial No. 94–47

Printed for the use of the
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NOTE.—The first listed minority member is counterpart to the subcommittee chairman.

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TO PROVIDE FOR AN ADDITIONAL ASSISTANT SECRETARY OF THE INTERIOR RESPONSIBLE FOR INDIAN AFFAIRS

THURSDAY, MARCH 4, 1976

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INDIAN AFFAIRS OF THE
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D. C.

The subcommittee met at 10:10 a.m., pursuant to notice, in room 1324, Longworth House Office Building, Hon. Lloyd Meeds (chairman of the subcommittee) presiding.

Mr. MEEDS. The Subcommittee on Indian Affairs of the full Committee on Interior and Insular Affairs will be in session for the consideration of H.R. 4344, and H.R. 8536 by Mr. Young of Alaska, and H.R. 11258 by Mr. Clausen of California.

Without objection, the bills and the communications from the Department will be made a part of the record at this point.

[The documents referred to are as follows:]

94TH CONGRESS
1ST SESSION

H. R. 4344

IN THE HOUSE OF REPRESENTATIVES

MARCH 5, 1975

Mr. YOUNG of Alaska introduced the following bill; which was referred to the Committee on Interior and Insular Affairs

A BILL

To establish within the Department of the Interior an additional Assistant Secretary of the Interior for Indian Affairs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be in the Department of the Interior, in addition to the Assistant Secretaries now provided for by law, one additional Assistant Secretary of the Interior for Indian Affairs, who shall be appointed by the President by and with the advice and consent of the Senate, who shall be responsible for such duties as the Secretary of the Interior shall prescribe with respect to the conduct of Indian affairs, and who shall receive compensation at the rate now or here-

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after prescribed by law for Assistant Secretaries of the Interior.

SEC. 2. Section 5315 of title 5 of the United States Code is amended by striking out "6" at the end of item (18) and by inserting in lieu thereof "(7)".

SEC. 3. Section 462, Revised Statutes, as amended and supplemented (25 U.S.C. 1), and paragraph (45) of section 5316 of title 5 of the United States Code, are repealed: *Provided*, That this section shall not take effect until an Assistant Secretary of the Interior for Indian Affairs has been confirmed and takes the oath of office.

94TH CONGRESS
1ST SESSION

H. R. 8536

IN THE HOUSE OF REPRESENTATIVES

JULY 10, 1975

Mr. YOUNG of Alaska introduced the following bill; which was referred to the Committee on Interior and Insular Affairs

A BILL

To establish within the Department of the Interior the position of an additional Assistant Secretary of the Interior, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be hereafter in the Department of the Interior, in addition to the Assistant Secretaries now provided for by law, one additional Assistant Secretary of the Interior for Indian Affairs who shall be appointed by the President by and with the advice and consent of the Senate, who shall be responsible for such duties as the Secretary of the Interior shall prescribe with respect to the conduct of Indian Affairs and who shall receive compensation at the rate now

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or hereafter prescribed by law for Assistant Secretaries of the Interior.

SEC. 2. Section 5315, title 5, United States Code, is amended by striking the figure "(6)" at the end of item (18) and by inserting in lieu thereof the figure "(7)".

SEC. 3. (a) The following provisions are repealed effective when an Assistant Secretary for Indian Affairs has been confirmed and takes the oath of office:

(1) paragraph (45) of section 5316 of title 5 of the United States Code;

(2) section 462, Revised Statutes, as amended and supplemented (25 U.S.C. 1); and

(3) the Act of June 5, 1942 (56 Stat. 312) as amended (25 U.S.C. 2a).

(b) The Act of August 8, 1946 (60 Stat. 939; 25 U.S.C. 1a), is amended to read as follows: "The Secretary of the Interior is authorized to delegate any of his functions, powers, and duties with respect to the conduct of Indian Affairs to the Assistant Secretary of the Interior for Indian Affairs and such other officers and employees of the Department of the Interior as the Secretary may designate. The Secretary may amend and revoke such delegations and may authorize such successive redelegations of such functions, powers, and duties as he may deem desirable. The Secretary may also make such rules and regulations as may be neces-

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sary to carry out his functions, powers, and duties with respect to the conduct of Indian Affairs.".

(c) All rules, regulations, orders, authorizations, delegations duly issued, made, or taken either by the Secretary of the Interior relating to the Commissioner of Indian Affairs or by the Commissioner of Indian Affairs prior to the effective date of the repeals in subsection (a) of this section shall continue in full force and effect until modified or rescinded by the Secretary of the Interior or his designeee and all references therein to the Commissioner of Indian Affairs shall be deemed to be to the Assistant Secretary of the Interior for Indian Affairs.

SEC. 4. Each of the following provisions is amended by deleting the titles "Commissioner of Indian Affairs" and "Commissioner" each time they appear and inserting in lieu thereof in each such instance the title "Secretary of the Interior":

(1) section 7 of the Act of May 17, 1882 (22 Stat. 88; 25 U.S.C. 3);

(2) section 464, Revised Statutes (25 U.S.C. 8);

(3) section 2156, Revised Statutes (25 U.S.C. 229);

(4) section 5 of the Act of August 15, 1876 (19 Stat. 176, 200; 25 U.S.C. 261);

(5) the provision of section 1 of the Act of March 3,

1901 (31 Stat. 1058, 1066), as amended by section 10 of the Act of March 3, 1903 (32 Stat. 982, 1009; 25 U.S.C. 262);

(6) the penultimate paragraph under the heading "SUPPORT OF SCHOOLS" in section 1 of the Act of June 7, 1897 (30 Stat. 62, 83; 25 U.S.C. 274);

(7) section 11 of the Act of August 15, 1894 (28 Stat. 313; 25 U.S.C. 286);

(8) the first, tenth, and final paragraphs under the subheading "COMMISSIONER", under the heading "I. GENERAL PROVISIONS" in the Act of March 1, 1907 (34 Stat. 1015, 1016, 1018; 25 U.S.C. 288);

(9) the third proviso in the seventh paragraph under the subheading "COMMISSIONER" under the heading "I. GENERAL PROVISIONS" in the Act of March 3, 1909 (35 Stat. 781, 783; 25 U.S.C. 289);

(10) section 1 of the Act of May 29, 1908 (35 Stat. 444; 25 U.S.C. 404);

(11) the final paragraph under the subheading "SECRETARY" under the heading "I. GENERAL PROVISIONS" in the Act of June 21, 1906 (34 Stat. 325, 327; 25 U.S.C. 409);

(12) section 1 of the Act of May 24, 1950 (64 Stat. 190; 25 U.S.C. 442);

(13) section 11 of the Act of June 18, 1934 (48 Stat. 984, 986; 25 U.S.C. 471); and

(14) the proviso in section 7 of the Act of March 3, 1875 (18 Stat. 420, 450; 25 U.S.C. 96).

SEC. 5. (a) Section 463, Revised Statutes (25 U.S.C. 2), is amended by deleting the words "The Commissioner of Indian Affairs shall, under the direction of the Secretary of the Interior, and agreeably to" and inserting in lieu thereof "The Secretary of the Interior shall, in accordance with".

(b) Sections 2, 3, and 4 of the Act of June 26, 1892 (27 Stat. 272, 273; 25 U.S.C. 5, 6, and 7), are amended by deleting the title "Commissioner of Indian Affairs" each time it appears and inserting in lieu thereof in each instance the title "Secretary of the Interior" and by deleting the words "said office" each time they appear and inserting in lieu thereof in each such instance the words "the Bureau of Indian Affairs". Section 3 of such Act is further amended by deleting the words "the Commissioner thereof" and the words "such Commissioner" and inserting in lieu thereof in each such instance the words "the Secretary". Section 4 of such Act is further amended by deleting the words the "Commissioner's certificate" and by deleting the words "the Commissioner" each time they appear and inserting in lieu thereof in each such instance the words "the Secretary".

(c) The Act of April 30, 1908 (35 Stat. 70; 25 U.S.C. 12, 52, and 295), as amended is further amended (1) under the heading "I. GENERAL PROVISIONS" and the subheading "SECRETARY", in the second paragraph by deleting the words "under the jurisdiction of the Commissioner of Indian Affairs" and inserting in lieu thereof "of the Bureau of Indian Affairs," and (2) under the same heading and under the subheading "COMMISSIONER", in the tenth paragraph, by deleting the words "the Commissioner of Indian Affairs" the first time they appear and inserting in lieu thereof the words "the Secretary of the Interior" and by deleting the words "subject to the supervision of the Secretary of the Interior" and in the fourteenth and last paragraph thereof, by deleting the words "the Commissioner of Indian Affairs" each time they appear and inserting in lieu thereof in each such instance the words "the Secretary of the Interior".

(d) Section 1 of the Act of February 14, 1920 (41 Stat. 408, 414; 25 U.S.C. 53), in the second paragraph under the heading "ADVERTISEMENT FOR SALE OF INDIAN LANDS (REIMBURSABLE)" is amended by deleting the words "any disbursing agent of the Indian Service, with the approval of the Commissioner of Indian Affairs, may authorize a clerk employed in his office to act in his place" and insert in lieu thereof the words "any dis-

bursing agent of the Bureau of Indian Affairs, with the approval of the Secretary of the Interior, may authorize a clerk employed in his office to act in his place".

(e) Section 2103, Revised Statutes, as amended (25 U.S.C. 81), is further amended by deleting the words "the Secretary of the Interior and the Commissioner of Indian Affairs" and inserting in lieu thereof "the Secretary of the Interior" and by further deleting the words "the Commissioner and the Secretary" and inserting in lieu thereof "the Secretary".

(f) Section 2104, Revised Statutes (25 U.S.C. 82), is amended by deleting the words "filed with the Commissioner of Indian Affairs" and inserting in lieu thereof "filed with the Secretary of the Interior" and by further deleting the words "the Secretary of the Interior and the Commissioner of Indian Affairs shall determine therefrom whether, in their judgment," and inserting in lieu thereof "the Secretary of the Interior shall determine therefrom whether, in his judgment".

(g) Section 2106, Revised Statutes (25 U.S.C. 84), is amended by deleting the words "the consent of the Secretary of the Interior and the Commissioner of Indian Affairs" and inserting in lieu thereof "the consent of the Secretary of the Interior".

(h) Section 4 of the Act of August 15, 1894 (28 Stat,

286, 312; 25 U.S.C. 99), is amended by deleting the words "the Commissioner of Indian Affairs is authorized to advertise in the spring of each year for bids, and to enter into contracts, subject to the approval of the Secretary of the Interior, for goods and supplies for the Indian Service" and inserting in lieu thereof "the Secretary of the Interior and the Secretary of Health, Education, and Welfare are each authorized to advertise in the spring of each year for bids, and to enter into contracts for goods and supplies for the Bureau of Indian Affairs and the Indian Health Service respectively,".

(i) The ninth paragraph under the heading "MISCELLANEOUS" in section 1 of the Act of March 3, 1893 (27 Stat. 612, 631), as amended, (25 U.S.C. 178), is further amended by deleting the words "said fees shall be paid by the Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, on an account stated by the proper land officers through the Commissioner of the General Land Office" and inserting in lieu thereof "said fees shall be paid by the Secretary of the Interior from funds appropriated for the administration of Indian Affairs".

(j) Section 2133, Revised Statutes, as amended (25 U.S.C. 264), is further amended by deleting the words "unless first licensed so to do by the Commissioner of Indian Affairs, under and in conformity to regulations to be established by the Secretary of the Interior" and inserting in lieu

thereof "unless first licensed so to do by the Secretary of the Interior".

(k) The second paragraph under the heading "SUPPORT OF SCHOOLS" in section 1 of the Act of April 21, 1904 (33 Stat. 189, 211; 25 U.S.C. 292), is amended to read as follows: "The Secretary of the Interior may suspend or discontinue any reservation Indian school whenever he deems such action necessary or desirable".

(l) The fourth paragraph under the subheading "COMMISSIONER" under the heading "I. GENERAL PROVISIONS" in the Act of June 21, 1906 (34 Stat. 325, 328; 25 U.S.C. 302), is amended by deleting the words "The Commissioner of Indian Affairs, under the direction of the Secretary of the Interior," and inserting in lieu thereof "The Secretary of the Interior".

(m) Section 3 of the Act of February 8, 1887 (24 Stat. 388, 389), as amended (25 U.S.C. 333), is further amended by deleting the words "to the Commissioner of Indian Affairs, in duplicate, one copy to be retained in the Indian Office and the other to be transmitted to the Secretary of the Interior for his action, and to be deposited in the General Land Office" and inserting in lieu thereof "in duplicate to the Secretary of the Interior for his action, one copy to be retained in the Bureau of Indian Affairs and one copy to be deposited with the Bureau of Land Management".

(n) The second proviso in the nineteenth paragraph of section 1 of the Act of August 1, 1914 (38 Stat. 528, 586; 25 U.S.C. 376), is amended by deleting the words "the Secretary of the Interior or the Commissioner of Indian Affairs" and inserting in lieu thereof "the Secretary of the Interior".

(o) The third paragraph of section 1 of the Act of April 4, 1910 (36 Stat. 269, 270; 25 U.S.C. 383), is amended by deleting the words "submitted by the chief irrigation engineer in the Indian Service and approved by the Commissioner of Indian Affairs and the Secretary of the Interior" and inserting in lieu thereof "approved by the Secretary of the Interior,".

SEC. 6. The following provisions are hereby repealed:

(1) the eleventh paragraph under the subheading "COMMISSIONER" under the heading "I. GENERAL PROVISIONS" in the Act of March 3, 1909 (35 Stat. 781, 783; 25 U.S.C. 10);

(2) the paragraph with the subheading "INDIAN AGENTS-PROVISO" under the heading "II. GENERAL OFFICERS AND EMPLOYEES" in the Act of March 1, 1907 (34 Stat. 1015, 1020; 25 U.S.C. 66);

(3) section 2109, Revised Statutes (25 U.S.C. 146);

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(4) section 10 of the Act of March 2, 1889 (25 U.S.C. 980, 1003; 25 U.S.C. 272);

(5) the last proviso in the seventh paragraph under the heading "CURRENT AND CONTINGENT EXPENSES" in the Act of March 3, 1905 (33 Stat. 1048, 1049; 25 U.S.C. 272a);

(6) the section paragraph under the subheading "PRESIDENT." under the heading "I. GENERAL PROVISIONS" in the Act of June 21, 1906 (34 Stat. 325, 326; 25 U.S.C. 279);

(7) the tenth paragraph of section 18 of the Act of June 30, 1913 (38 Stat. 77, 96; 25 U.S.C. 285); and

(8) the last proviso in the third paragraph of section 1 of the Act of April 4, 1910 (36 Stat. 269, 271; 25 U.S.C. 384).

SEC. 7. Nothing in this Act shall diminish or repeal any of the authorities transferred to the Surgeon General of the United States or to the Secretary of the Department of Health, Education, and Welfare pursuant to the Act of August 5, 1954 (68 Stat. 674; 42 U.S.C. 2001-2004).

94TH CONGRESS
1ST SESSION

H. R. 11258

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 18, 1975

Mr. DON H. CLAUSEN introduced the following bill; which was referred to the Committee on Interior and Insular Affairs

A BILL

To establish within the Department of the Interior the position of an additional Assistant Secretary of the Interior, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be hereafter in the Department of the Interior, in addition to the Assistant Secretaries now provided for by law, one additional Assistant Secretary of the Interior for Indian Affairs who shall be appointed by the President by and with the advice and consent of the Senate, who shall be responsible for such duties as the Secretary of the Interior shall prescribe with respect to the conduct of Indian Affairs and who shall receive compensation at the rate now or

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hereafter prescribed by law for Assistant Secretaries of the Interior.

SEC. 2. Section 5315, title 5, United States Code, is amended by striking the figure "(6)" at the end of item (18) and by inserting in lieu thereof the figure "(7)".

SEC. 3. (a) The following provisions are repealed effective when an Assistant Secretary for Indian Affairs has been confirmed and takes the oath of office:

(1) paragraph (45) of section 5316 of title 5 of the United States Code;

(2) section 462, Revised Statutes, as amended and supplemented (25 U.S.C. 1); and

(3) the Act of June 5, 1942 (56 Stat. 312) as amended (25 U.S.C. 2a).

(b) The Act of August 8, 1946 (60 Stat. 939; 25 U.S.C. 1a), is amended to read as follows: "The Secretary of the Interior is authorized to delegate any of his functions, powers, and duties with respect to the conduct of Indian Affairs to the Assistant Secretary of the Interior for Indian Affairs and such other officers and employees of the Department of the Interior as the Secretary may designate. The Secretary may amend and revoke such delegations and may authorize such successive redelegations of such functions, powers, and duties as he may deem desirable. The Secretary may also make such rules and regulations as may be

necessary to carry out his functions, powers, and duties with respect to the conduct of Indian Affairs.".

(c) All rules, regulations, orders, authorizations, delegations duly issued, made, or taken either by the Secretary of the Interior relating to the Commissioner of Indian Affairs or by the Commissioner of Indian Affairs prior to enactment of this Act shall continue in full force and effect until modified or rescinded by the Secretary of the Interior or his designee and all references therein to the Commissioner of Indian Affairs sball be deemed to be to the Assistant Secretary of the Interior for Indian Affairs.

SEC. 4. Each of the following provisions are amended by deleting the titles "Commissioner of Indian Affairs" and "Commissioner" each time they appear and inserting in lieu thereof in each such instance the title "Secretary of the Interior":

(1) section 7 of the Act of May 17, 1882 (22 Stat. 88; 25 U.S.C. 3);

(2) section 464, Revised Statutes (25 U.S.C. 8);

(3) section 2156, Revised Statutes (25 U.S.C. 229);

(4) section 5 of the Act of August 15, 1876 (19 Stat. 176, 200; 25 U.S.C. 261);

(5) the provision of section 1 of the Act of March 3, 1901 (31 Stat. 1058, 1066), as amended by section

10 of the Act of March 3, 1903 (32 Stat. 982, 1009; 25 U.S.C. 262);

(6) the penultimate paragraph under the heading "SUPPORT OF SCHOOLS" in section 1 of the Act of June 7, 1897 (30 Stat. 62, 83; 25 U.S.C. 274);

(7) section 11 of the Act of August 15, 1894 (28 Stat. 313; 25 U.S.C. 286);

(8) the first, tenth, and final paragraphs under the subheading "COMMISSIONER", under the heading "I. GENERAL PROVISIONS" in the Act of March 1, 1907 (34 Stat. 1015, 1016, 1018; 25 U.S.C. 288);

(9) the third proviso in the seventh paragraph under the subheading "COMMISSIONER" under the heading "I. GENERAL PROVISIONS" in the Act of March 3, 1909 (35 Stat. 781, 783; 25 U.S.C. 289);

(10) section 1 of the Act of May 29, 1908 (35 Stat. 444; 25 U.S.C. 404);

(11) the final paragraph under the subheading "SECRETARY" under the heading "I. GENERAL PROVISIONS" in the Act of June 21, 1906 (34 Stat. 325, 327; 25 U.S.C. 409);

(12) section 1 of the Act of May 24, 1950 (64 Stat. 190; 25 U.S.C. 442);

(13) section 11 of the act of June 18, 1934 (48 Stat. 984, 986; 25 U.S.C. 471); and

(14) the proviso in section 7 of the Act of March 3, 1875 (18 Stat. 420, 450; 25 U.S.C. 96).

SEC. 5. (a) Section 463, Revised Statutes (25 U.S.C. 2), is amended by deleting the words "The Commissioner of Indian Affairs shall, under the direction of the Secretary of the Interior, and agreeably to" and inserting in lieu thereof "The Secretary of the Interior shall, in accordance with".

(b) Sections 2, 3, and 4 of the Act of June 26, 1892 (27 Stat. 272, 273; 25 U.S.C. 5, 6, and 7), are amended by deleting the title "Commissioner of Indian Affairs" each time it appears and inserting in lieu thereof in each instance the title "Secretary of the Interior" and by deleting the words "said office" each time they appear and inserting in lieu thereof in each such instance the words "the Bureau of Indian Affairs". Section 3 of such Act is further amended by deleting the words "the Commissioner thereof" and the words "Such Commissioner" and inserting in lieu thereof in each such instance the words "the Secretary". Section 4 of such Act is further amended by deleting the words the "Commissioner's certificate" and by deleting the words "the Commissioner" each time they appear and inserting in lieu thereof in each such instance the words "the Secretary".

(c) The Act of April 30, 1908 (35 Stat. 70) as amended (25 U.S.C. 12, and 295) is further amended under

the heading "I. GENERAL PROVISIONS" and the subheading "COMMISSIONER", in the tenth paragraph, by deleting the words "the Commissioner of Indian Affairs" the first time they appear and inserting in lieu thereof the words "the Secretary of the Interior" and by deleting the words "subject to the supervision of the Secretary of the Interior" and in the fourteenth and last paragraph thereof, by deleting the words "the Commissioner of Indian Affairs" each time they appear and inserting in lieu thereof in such instance the words "the Secretary of the Interior".

(d) Section 1 of the Act of February 14, 1920 (41 Stat. 408, 414; 25 U.S.C. 53), in the second paragraph under the heading "ADVERTISEMENT FOR SALE OF INDIAN LANDS (REIMBURSABLE)" is amended by deleting the words "any disbursing agent of the Indian Service, with the approval of the Commissioner of Indian Affairs, may authorize a clerk employed in his office to act in his place" and insert in lieu thereof the words "any disbursing agent of the Bureau of Indian Affairs, with the approval of the Secretary of the Interior, may authorize a clerk employed in his office to act in his place".

(e) Section 2103, Revised Statutes, as amended, (25 U.S.C. 81), is further amended by deleting the words "the Secretary of the Interior and the Commissioner of Indian Affairs" and inserting in lieu thereof "the Secretary of the

Interior" and by further deleting the words "the Commissioner and the Secretary" and inserting in lieu thereof the Secretary".

(f) Section 2104, Revised Statutes (25 U.S.C. 82), is amended by deleting the words "filed with the Commissioner of Indian Affairs" and inserting in lieu thereof "filed with the Secretary of the Interior" and by further deleting the words "the Secretary of the Interior and the Commissioner of Indian Affairs shall determine therefrom whether, in their judgment," and inserting in lieu thereof "the Secretary of the Interior shall determine therefrom whether, in his judgment,".

(g) Section 2106, Revised Statutes (25 U.S.C. 84), is amended by deleting the words "the consent of the Secretary of the Interior and the Commissioner of Indian Affairs" and inserting in lieu thereof "the consent of the Secretary of the Interior".

(h) Section 4 of the Act of August 15, 1894 (28 Stat. 286, 312; 25 U.S.C. 99), is amended by deleting the words "the Commissioner of Indian Affairs is authorized to advertise in the spring of each year for bids, and to enter into contracts, subject to the approval of the Secretary of the Interior, for goods and supplies for the Indian Service" and inserting in lieu thereof "the Secretary of the Interior and the Secretary of Health, Education and Welfare are each

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authorized to advertise in the spring of each year for bids, and to enter into contracts for goods and supplies for the Bureau of Indian Affairs and the Indian Health Service respectively,".

(i) The ninth paragraph under the heading "MISCELLANEOUS" in section 1 of the Act of March 3, 1893 (27 Stat. 612, 631), as amended, (25 U.S.C. 178), is further amended by deleting the words "said fees shall be paid by the Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, on an account stated by the proper land officers through the Commissioner of the General Land Office" and inserting in lieu thereof "said fees shall be paid by the Secretary of the Interior from funds appropriated for the administration of Indian Affairs".

(j) Section 2133, Revised Statutes, as amended (25 U.S.C. 264), is further amended by deleting the words "unless first licensed so to do by the Commissioner of Indian Affairs, under and in conformity to regulations to be established by the Secretary of the Interior" and inserting in lieu thereof "unless first licensed so to do by the Secretary of the Interior".

(k) The second paragraph under the heading "SUPPORT OF SCHOOLS" in section 1 of the Act of April 21, 1904 (33 Stat. 189, 211; 25 U.S.C. 292), is amended to read as follows: "The Secretary of the Interior may suspend

or discontinue any reservation Indian school whenever he deems such action necessary or desirable".

(l) The fourth paragraph under the subheading "COMMISSIONER" under the heading "I. GENERAL PROVISIONS" in the Act of June 21, 1906 (34 Stat. 325, 328; 25 U.S.C. 302), is amended by deleting the words "The Commissioner of Indian Affairs, under the direction of the Secretary of the Interior," and inserting in lieu thereof "The Secretary of the Interior".

(m) Section 3 of the Act of February 8, 1887 (24 Stat. 388, 389), as amended (25 U.S.C. 333), is further amended by deleting the words "to the Commissioner of Indian Affairs, in duplicate, one copy to be retained in the Indian Office and the other to be transmitted to the Secretary of the Interior for his action, and to be deposited in the General Land Office" and inserting in lieu thereof "in duplicate to the Secretary of the Interior for his action, one copy to be retained in the Bureau of Indian Affairs and one copy to be deposited with the Bureau of Land Management".

(n) The second proviso in the nineteenth paragraph of section 1 of the Act of August 1, 1914 (38 Stat. 528, 586; 25 U.S.C. 376), is amended by deleting the words "the Secretary of the Interior or the Commissioner of Indian Affairs" and inserting in lieu thereof "the Secretary of the Interior".

(o) The third paragraph of section 1 of the Act of April 4, 1910 (36 Stat. 269, 270; 25 U.S.C. 383), is amended by deleting the words "submitted by the chief irrigation engineer in the Indian Service and approved by the Commissioner of Indian Affairs and the Secretary of the Interior" and inserting in lieu thereof "approved by the Secretary of the Interior,".

SEC. 6. The following provisions are hereby repealed:

(1) the eleventh paragraph under the subheading "COMMISSIONER" under the heading "I. GENERAL PROVISIONS" in the Act of March 3, 1909 (35 Stat. 781, 783; 25 U.S.C. 10);

(2) the paragraph with the subheading "INDIAN AGENTS-PROVISO" under the heading "II. GENERAL OFFICERS AND EMPLOYEES" in the Act of March 1, 1907 (34 Stat. 1015, 1020; 25 U.S.C. 66);

(3) section 2109, Revised Statutes (25 U.S.C. 146);

(4) section 10 of the Act of March 2, 1889 (25 U.S.C. 980, 1003; 25 U.S.C. 272);

(5) the last proviso in the seventh paragraph under the heading "CURRENT AND CONTINGENT EXPENSES" in the Act of March 3, 1905 (33 Stat. 1048, 1049; 25 U.S.C. 272a);

(6) the section paragraph under the subheading

"PRESIDENT" under the heading "I. GENERAL PROVISIONS" in the Act of June 2, 1906 (34 Stat. 325, 326; 25 U.S.C. 279);

(7) the tenth paragraph of section 18 of the Act of June 30, 1913 (38 Stat. 77, 96; 25 U.S.C. 285); and

(8) the last proviso in the third paragraph of section 1 of the Act of April 4, 1910 (36 Stat. 269, 271; 25 U.S.C. 384).

SEC. 7. Nothing in this Act shall diminish or repeal any of the authorities transferred to the Surgeon General of the United States or to the Secretary of the Department of Health, Education, and Welfare pursuant to the Act of August 5, 1954 (68 Stat. 674; 42 U.S.C. 2001-2004).

UNITED STATES DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., March 2, 1976.

Hon. LLOYD MEEDS,
Chairman, Subcommittee on Indian Affairs,
House of Representatives, Washington, D.C.

Dear Mr. MEEDS: This responds to your February 3 letter raising certain questions regarding H.R. 4344, H.R. 8536, and H.R. 11258, each of which is to establish the position of Assistant Secretary of the Interior for Indian Affairs and abolish the position of Commissioner of Indian Affairs.

Our most recent submission of proposed legislation calling for the establishment of an Assistant Secretary of the Interior for Indian Affairs was our May 15, 1975 letter (copy enclosed) to the Speaker explaining the proposal and transmitting a draft bill which was introduced as H.R. 8536. Our August 5, 1975 letter transmitted a technical amendment and the proposal including that amendment has been introduced as H.R. 11258. H.R. 4344 is based on a bill passed by the House in the 93d Congress.

The first item in your letter questions why the bills are not as explicit in their description of the new Assistant Secretary's responsibility for Indian Affairs as that found in 25 U.S.C. 2 concerning the Commissioner of Indian Affairs. You indicate that section 1 of these bills are unclear as to whether the new Assistant Secretary will have the range of authority the Commissioner presently has as the only Federal official with sole responsibility for Indian Affairs.

Further, you question the effect of sections 3(b) and (5a) of H.R. 8536 and H.R. 11258. You request justification for section 3(b), which amends the provision codified in 25 U.S.C. 1a by authorizing the Secretary of the Interior to delegate Indian matters to such employees and officers as he may designate. You indicate that section 5(a) appears to remove the present limitation on the Secretary's authority to delegate Indian matters found in 25 U.S.C. 2, and amends the provision codified in 25 U.S.C. 2 to reflect the changes made by Reorganization Plan No. 3 of 1950. You express concern that these changes do not assure that all Indian matters delegated by the Secretary will be delegated to the new Assistant Secretary.

The provisions referred to in the subject bill would neither expand the current authority of the Secretary with regard to delegating of authority in matters relating to Indian affairs nor would they provide less authority to the Assistant Secretary for Indian Affairs than the Commissioner of Indian Affairs now has.

On March 15, 1973, this Department again transmitted the Assistant Secretary proposal to the 93d Congress and H.R. 620 was a response to that proposal. The language in section 1(a) of H.R. 4344, H.R. 8536 and H.R. 11258 reflects the revisions in the House of H.R. 620 (see House Interior and Insular Affairs Committee Report No. 93-374 on H.R. 620). By letter of June 6, 1973, this Department commented on section 1 of H.R. 620 (which is the same as section 1 of each of the three current bills) and expressed concern that it would restrict the title and duties of the new Assistant Secretary (a copy of that letter is attached). However, the subsequent House report stated:

"The departmental communication transmitting the draft legislation stated that the new Assistant Secretary would be responsible solely for Indian matters. The proposed bill, however, did not contain a provision so designating the new Assistant Secretary. H.R. 620 specifically designates the position as Assistant Secretary for Indian Affairs and limits his responsibility to Indian matters.

"Departmental witnesses before the Subcommittee on Indian Affairs opposes such statutory designation as raising administrative problems. However, the arguments advanced by the Department were extremely weak. The committee concluded that its intent that the new Assistant Secretary not be given at some later date, additional substantive duties of a non-Indian nature, and the repeal of the position of Commissioner of Indian Affairs, overrode the arguments of the Department in this regard.

"While it is not the intent of the committee that the language of the bill be interpreted as preventing the Assistant Secretary for Indian Affairs from performing other temporary duties (e.g. serving as Acting Secretary of the Interior), the committee does intend that the permanent, primary function of such officer shall be that of Indian affairs and that he will not be assigned other duties of a substantive, permanent nature."

Based on this clear statement of congressional intent, the Department abandoned its opposition and, indeed, utilized the same language in our May 15, 1975, resubmission of the proposal to the 94th Congress.

We do not interpret the provisions codified in 25 U.S.C. 1a and 2 as limiting the Secretary in his delegation of authorities over Indian matters solely to the Commissioner but, rather, as granting discretion to the Secretary to delegate authorities to the Commissioner over all Indian matters. As we will discuss later this total delegation cannot be done as a practical matter. Our proposal would not change the existing situation under 25 U.S.C. 1a and 2, and would conform to the current law whereby the Secretary is not limited as to which officer or employee of the Interior Department he may make such delegations. The authority for the current delegations is contained in section 2 of Reorganization Plan No. 3 of 1950 (15 F.R. 3174; 64 Stat. 1262; 5 U.S.C. App.) as authorized by the Reorganization Act of 1949 (63 Stat. 203). Section 1(a) of that plan provided for the transfer of all the statutory authorities of the Commissioner of Indian Affairs to the Secretary of the Interior. The two provisions are as follows:

"Section 1. Transfer of functions to the Secretary.—(a) * * * there are hereby transferred to the Secretary of the Interior all functions of all other officers of the Department of the Interior and all functions of all agencies and employees of such Department."

"Sec. 2. Performance of functions of Secretary.—The Secretary of the Interior may from time to time make such provisions as he shall deem appropriate authorizing the performance by any other officer, or by any agency or employee, of the Department of the Interior of any function of the Secretary, including any function transferred to the Secretary by the provisions of this reorganization plan."

In addition, certain authorities of the President relating to Indian affairs (that is, provisions in 25 U.S.C. 62, 63, 140, 348, 348a, and 391, and certain uncodified statutes) have been delegated to the Secretary of the Interior by section 1 of Executive Order 10250, as amended (copy attached). Section 301 of title 3, United States Code contains the general authority of the President to delegate functions (Executive Order 10250 is included as a note to 3 U.S.C. 301). Section 5 of Executive Order 10250 (as amended by Executive Order 10732, a copy of which is attached) only authorizes redelegation of these authorities to the Under Secretary. However, these authorities have not been so delegated.

Attached is a copy of the Interior Departmental Manual provision setting forth in 230 DM 1.1 the general delegation of authority relating to Indian Affairs from the Secretary to the Commissioner of Indian Affairs and the limitations on that delegation set out in 230 DM 1.2. The authority delegated to the Commissioner to issue regulations and public notices is set out in 230 DM 2.1 and subject to the limitations in 230 DM 2.2 (copies attached).

It should be noted that the delegation in 230 DM 2.1 to the Commissioner of authority to issue regulations is not required under the provisions in 25 U.S.C. 1a and 2. The final sentence of the act of August 8, 1946 (60 Stat. 939) codified in 25 U.S.C. 1a provides that—"Nothing in this Act shall be deemed to abrogate or curtail any authority to make delegations conferred by any other provision of law, nor shall anything in this Act be deemed to convey authority to delegate any power to issue regulations." However, the authority in the above reorganization plan has been utilized to authorize the delegation in 230 DM 2.1.

All the authority included in the limitations set out in 230 DM 1.2 and 2.2 remain vested in the Secretary except as follows:

230 DM 1.2 B.—The administrative authorities (procurement, personnel, et cetera) of the Secretary are delegated to the Commissioner of Indian Affairs, as well as to other bureau and office heads, on a functional basis through the provisions in part 205 of the departmental manual.

230 DM 1.2 C.—The authority to approve land allotments or allotment schedules or to issue land patents has been delegated to the Director, Bureau of Land Management.

230 DM 1.2 D.—Indian Arts and Crafts Board authorities are delegated to that Board.

230 DM 1.2 E.—As indicated, certain of the Secretary's authority to decide appeals are delegated to the Director, Office of Hearings and Appeals or to the Solicitor.

230 DM 1.2 F.—The authority to grant permits for the examination of ruins, the excavation of archeological sites, and the gathering of objects of antiquity on Indian lands is delegated to the Director, National Park Service.

230 DM 1.2 H.—Authorities under the Alaska Native Claims Settlement Act not delegated to the Commissioner of Indian Affairs are delegated to the Director, Bureau of Land Management or to the Director, National Park Service.

The authority of the Secretary to make the above delegations to officers other than the Commissioner of Indian Affairs is found in section 2 of Reorganization

Plan No. 3 of 1950 which became effective May 24, 1950, which supercedes the earlier statutory provisions codified in 25 U.S.C. 1a and 2 to the extent that they are inconsistent.

You also question whether these bills should "clean up" title 25 of the code and repeal so-called obsolete sections. In this regard, you indicate that 3 subsections of section 5 of H.R. 8536 and H.R. 11258 raise problems. They are: Subsection 5(h) which amends 25 U.S.C. 99; subsection 5(m) which amends 25 U.S.C. 333; and subsection 5(o) which amends 25 U.S.C. 383.

The reference to the Secretary of Health, Education, and Welfare and the Indian Health Service in the subsection 5(h) amendment to 25 U.S.C. 99 was included at the request of the Indian Health Service to assure that the other changes in 25 U.S.C. 99 would not be interpreted as eliminating the authority of the IHS (under section 1 of Public Law 86-121; 42 U.S.C. 2001) to contract for supplies in advance of appropriations pursuant to that provision. Section 7 of our proposed bill is also included to avoid any possible interpretation that any HEW or IHS authorities are being eliminated.

Section 1 of Public Law 86-121 transferred all the "functions, responsibilities, authorities, and duties of the Department of the Interior, Bureau of Indian Affairs, Secretary of the Interior, and Commissioner of Indian Affairs" relating to Indian health to the Surgeon General under the supervision and direction of the Secretary of Health, Education, and Welfare. We note that pursuant to Reorganization Plan No. 3 of 1966 (31 F.R. 8855; 80 Stat. 1610; 5 U.S.C. App.) all the functions of the Surgeon General, the Public Health Service and of the employees, officers, and agencies of the Public Health Service were transferred to the Secretary of Health, Education, and Welfare, and that such Secretary may from time to time authorize the performance of such functions by any officer, employee, or agency of the Department of Health, Education, and Welfare.

The amendment in subsection 5(m) to 25 U.S.C. 333 is necessary. Section 3 of the Act of February 3, 1887, as amended, was codified in 25 U.S.C. 333. The codifer inserted a reference to the Bureau of Land Management (BLM) rather than to the General Land Office as actually provided in the 1887 Act, because section 403 of Reorganization Plan No. 3 of 1946 consolidated the General Land Office and the Grazing Service into the new BLM in 1946 (11 F.R. 7875; 60 Stat. 1097; 5 U.S.C. App.). See codifier's note to 25 U.S.C. 333. However, a codifier's change in the text does not alter the actual statutory language. Inasmuch as we were proposing to amend the statute to eliminate reference to the Commissioner of Indian Affairs, we also included substitution of the "Bureau of Land Management" for the "General Land Office."

The amendment in section 5(o) to the provision in 25 U.S.C. 383 eliminates reference to the surveys, plans, and reports being "submitted by the chief irrigation engineer in the Indian service" because under section 1 of Reorganization Plan No. 3 of 1950 quoted above, all such "functions" of employees within the Interior Department were transferred to the Secretary of the Interior and there is no reason to continue in statutory law that which is internal administrative procedure.

With respect to your concern regarding our amendments to the provisions codified in title 25 of the United States Code, we stated in our May 15, 1975 letter to the Speaker that "we believe that enactment of legislation eliminating the position of Commissioner of Indian Affairs is an appropriate time to conform the language of these statutes [in title 25, United States Code] to the provisions of Reorganization Plan No. 3 of 1950."

Finally, you request an explanation as to the need for the repeals in section 6 of our proposal. We proposed to repeal these eight provisions of title 25 rather than amend the references therein from "Commissioner of Indian Affairs" to "Secretary of the Interior" because we believed there was clearly no further use for them as indicated on pages 3 and 4 of our May 15, 1975 letter. However, we understand that the committee will consider referring the amendments, repeals, and savings provisions proposed in sections 3(b) through 7 of our proposed bill (i.e., of H.R. 8536 and H.R. 11258) to the American Indian Policy Review Commission Task Force on Law Revision, Consolidation, and Codification. Should the committee decide to take this action, we would be pleased to assist the Task Force in their efforts.

Sincerely yours,

(sgd) JAMES T. CLARKE,
Assistant Secretary of the Interior.

Enclosures.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., May 16, 1975.

Hon. CARL ALBERT,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: Enclosed is a proposal "To establish within the Department of the Interior the position of an additional Assistant Secretary of the Interior, and for other purposes."

We recommend that the proposal be referred to the appropriate committee for consideration and that it be enacted.

The purpose of this proposal is to upgrade the position of Commissioner of Indian Affairs to that of an Assistant Secretary of the Interior for Indian Affairs. The position of Commissioner of Indian Affairs would be eliminated by this proposal. This Assistant Secretary, who would be in addition to those which the Department currently has, would be appointed by the President with the advice and consent of the Senate. This Assistant Secretary would have such duties as the Secretary of Interior assigned, with respect to the conduct of Indian affairs, and will assume the duties of the Commissioner of Indian Affairs. This new Assistant Secretary for Indian Affairs would be paid at the same rate as the Department's other Assistant Secretaries. The proposal would amend section 5315 of title 5, United States Code, to increase the Department's number of Assistant Secretaries from six to seven.

Although it is not contemplated that elimination of the post of Commissioner will require the restructuring of the Bureau itself, we believe that the Secretary of the Interior has ample authority under Reorganization Plan No. 3 of 1950 (15 F.R. 3174; 64 Stat. 1262; 5 U.S.C. App.), to make such alterations as might be needed.

We believe that the creation of this position will more accurately reflect the Department's responsibility to Indians, and the place that this responsibility occupies within the structure of the Department. The creation of this position is in accord with our administrative actions which have raised the Department's responsibility for Indians to its proper level within the structure of the Department—the Commissioner of Indian Affairs now reports directly to the Secretary on the same basis as do the six Assistant Secretaries of the Department. Because Indians no longer have to compete with the land and other natural resources for attention in the day-to-day operation of the Department, the new Assistant Secretary will be able to focus his attention solely upon the unique problems of Indians. The new Assistant Secretary will be able to work full time with the Indians toward the improvement of their economic and social conditions, and assist in the development of their full potential, which would benefit both the Indians and the Nation. One of the primary responsibilities of the new Assistant Secretary will be to help guide the implementation of the national policy of Indian self-determination set forth in the Indian Self-Determination Act which was recently enacted into law.

The draft bill also amends or repeals all statutes codified in title 25 of the United States Code which make reference to the Commissioner of Indian Affairs. These amendments provide that the duty or authority involved is now that of the Secretary of the Interior. Under Reorganization Plan No. 3 of 1950, all statutory functions of the Commissioner of Indian Affairs (and of other Interior Department officials) were transferred to the Secretary of the Interior. Therefore, these amendments do not alter the current legal situation. However, we believe that enactment of legislation eliminating the position of Commissioner of Indian Affairs is an appropriate time to conform the language of these statutes to the provision of Reorganization Plan No. 3 of 1950.

Subsection 3(b) of our proposal would amend the act of August 8, 1946 (60 Stat. 939; 25 U.S.C. 1a) to provide that the Secretary of the Interior is authorized to delegate any of his functions, powers, and duties with respect to the conduct of Indian affairs to the Assistant Secretary of the Interior for Indian Affairs, and such other officers and employees of the Department of the Interior as the Secretary may delegate.

Subsection 3(c) of the draft bill provides that all rules, regulations, orders, authorizations, and delegations which are issued by the Secretary of the Interior relating to the Commissioner of Indian Affairs or by the Commissioner prior to the effective date that certain laws are repealed by this bill, shall continue in full force and effect until the Secretary of the Interior modifies or rescinds such documents. All references to the Commissioner of Indian Affairs in these documents shall be deemed to be to the Assistant Secretary for Indian Affairs.

The amendments in section 4 of the enclosed draft bill includes those cases where a simple substitution of the title "Secretary of the Interior" for "Commissioner of Indian Affairs" is necessary. Those in section 5 provide for the situation where other language changes are necessary to reflect the transfer of a duty or responsibility to the Secretary.

Section 6 provides for the repeal rather than amendment of certain provisions which we have identified as clearly no longer needed, but which include references to the Commissioner of Indian Affairs.

Section 6(1) of our proposal would repeal the provision of section 10 of title 25 of the United States Code. This statute passed in 1942, would be duplicated by the amendment proposed in subsection 3(b) of our draft bill.

The provision of section 66 of title 25 would be repealed by our proposed section 6(2). This provision derives from a 1907 appropriation act. Its original purpose was to authorize the Commissioner of Indian Affairs to devolve the duties of the superintendent of an Indian agency upon the superintendent of the school located at that agency. At the time of enactment, many Indian agency superintendents were military officers. This situation no longer exists.

Our proposed section 6(3) would repeal an 1873 statute codified in 25 U.S.C. 146. The Bureau of Indian Affairs no longer distributes "food, clothing or supplies."

Section 6(4) would repeal the provisions in 25 U.S.C. 272, which provides for the appointment of a Superintendent of Indian schools by the President with the advice and consent of the Senate. Such a position is no longer in use. The provision was first enacted in 1888, and funds were annually appropriated thereunder until 1909. The provision of 25 U.S.C. 272(a), which section 6(5) of our proposal would repeal, is derived from a 1905 statute, and provides for a delegation of duties to the Superintendent of Indian schools.

The provision codified in 25 U.S.C. 279 derives from a 1906 statute which provides for the Commissioner of Indian Affairs to distribute rations of food and clothing to mission schools on reservations. The Bureau of Indian Affairs no longer distributes rations of food and clothing. Section 6(6) of our proposal would repeal this provision.

The provision set out in 25 U.S.C. 285, derives from a 1913 statute. Section 6(7) of our proposal would repeal this provision, which has been superseded by enactment in 1946 of a provision codified in 25 U.S.C. 233 providing authority for the enforcement of State compulsory school attendance laws with respect to Indian childern.

Our proposed section 6(8) would repeal the provision codified in 25 U.S.C. 384. This provision derives from a 1910 statute, which is no longer necessary as the Secretary of the Interior, or his designee, has sufficient authority to employ the necessary irrigation engineers.

Section 7 preserves the authority transferred with the Indian health activity from the Interior Department to the Department of Health, Education, and Welfare in 1956.

The Office of Management and Budget has advised that this legislative proposal is in accord with the program of the President.

Sincerely yours,

ROYSTON C. HUGHES,
Assistant Secretary of the Interior.

Enclosure.

APPENDIX

PROVISIONS PROPOSED FOR REPEAL BY SECTION 6

Section 6 of our proposed bill provides for the repeal of the following provisions:

(1) The 11th paragraph under the subheading "Commissioner" under the heading "I. General Provisions" in the Act of March 3, 1909 (35 Stat. 781, 783; 25 U.S.C. 10):

"The Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, may designate an employee of the Indian Office to sign letters of that office requiring the signature of the Commissioner or assistant commissioner, and all signatures of such employee while acting under such designation shall have the same force and effect as if made by said Commissioner or assistant commissioner."

(2) The paragraph with the subheading "Indian Agents Proviso" under the heading "II. General Officers and Employees" in the Act of March 1, 1907 (34 Stat. 1015, 1020; 25 U.S.C. 66):

"The Commissioner of Indian Affairs, with the approval of the Secretary of the Interior may devolve the duties of any Indian agency or part thereof upon the superintendent of the Indian school located at such agency or part thereof whenever in his judgment such superintendent can properly perform the duties of such agency. And the superintendent upon whom such duties devolve shall give bond a other Indian agents.

The pay of any superintendent who performs agency duties in addition to those of his superintendency may be increased by the Commissioner of Indian Affairs, in his discretion, to an extent not exceeding $300 per annum."

(3) Section 2109. Revised Statutes, 1873 (25 U.S.C. 146):

"Whenever the issue of food, clothing, or supplies of any kind to Indians is provided for, it shall be the duty of the agent or commissioner issuing the same, at such issue thereof, whether it be both food and clothing, or either of them, or of any kind of supplies, to report to the Commissioner of Indian Affairs the number of Indians present and actually receiving the same."

(4) Section 10 of the Act of March 2, 1889 (25 U.S.C. 980, 1003; 25 U.S.C. 272):

"There shall be appointed by the President, by and with the advice and consent of the Senate, a person of knowledge and experience in the management, training, and practical education of children, to be Superintendent of Indian Schools, whose duty it shall be to visit and inspect the schools in which Indians are taught in whole or in part from appropriations from the United States Treasury, and report to the Commissioner of Indian Affairs, what, in his judgment, are the defects, if any, in any of them, in system, in administration, or in means for the most effective advancement of the pupils therein toward civilization and self-support, and what changes are needed to remedy such defects as may exist, and to perform such other duties in connection with Indian schools as may be prescribed by the Secretary of the Interior."

(5) The last proviso in the seventh paragraph under the heading "Current and Contingent Expenses" in the Act of March 3, 1905 (33 Stat. 1048, 1049; 25 U.S.C. 272a):

"The Superintendent of Indian schools shall perform such other duties as may be imposed upon him by the Commissioner of Indian Affairs, subject to the approval of the Secretary of the Interior."

(6) The section paragraph under the subheading "President" under the heading "I. General Provisions" in the Act of June 21, 1906 (34 Stat. 325, 326, 25 U.S.C. 279):

"Mission schools on an Indian reservation may, under rules and regulations prescribed by the Commissioner of Indian Affairs, receive for such Indian children duly enrolled therein, the rations of food and clothing to which said children would be entitled under treaty stipulations if such children were living with their parents."

(7) The 10th paragraph of section 18 of the Act of June 30, 1913 (38 Stat. 77, 96; 25 U.S.C. 285):

"The Commissioner of Indian Affairs is authorized in his discretion to withhold any annuities or other payments due to Osage Indian minors, above six years of age, whose parents fail, neglect, or refuse to place such minors in some established school for a reasonable portion of each year and to keep such children in regular attendance thereof. The Commissioner of Indian Affairs is authorized to make such rules and regulations as may be necessary to put this provision into force and effect."

(8) The last proviso in the third paragraph of section 1 of the Act of April 4, 1910 (36 Stat. 269, 271; 25 U.S.C. 384):

"The Commissioner of Indian Affairs, under the direction of the Secretary of the Interior, may employ superintendents of irrigation who shall be skilled irrigation engineers, not to exceed seven in number."

A BILL To establish within the Department of the Interior the position of an additional Assistant Secretary of the Interior, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That there shall be hereafter in the Department of the Interior, in addition to the Assistant Secretaries now provided for by law, one additional Assistant Secretary of the Interior for Indian Affairs who shall be appointed by the President by and with the advice and consent of the Senate, who shall be responsible for such duties as the Secretary of the Interior shall prescribe with respect to the conduct of Indian Affairs and who shall receive compensation at the rate now or hereafter prescribed by law for Assistant Secretaries of the Interior.

SEC. 2. Section 5315, title 5, United States Code, is amended by striking the figure "(6)" at the end of item (18) and by inserting in lieu thereof the figure "(7)".

SEC. 3. (a) The following provisions are repealed effective when an Assistant Secretary for Indian Affairs has been confirmed and takes the oath of office:

(1) Paragraph (45) of section 5316 of title 5 of the United States Code;

(2) Section 462, Revised Statutes, as amended and supplemented (25 U.S.C. 1);

(3) The Act of June 5, 1942 (56 Stat. 312) as amended (25 U.S.C. 2a);

(b) The Act of August 8, 1946 (60 Stat. 939; 25 U.S.C. 1a), is amended to read as follows: "The Secretary of the Interior is authorized to delegate any of his functions, powers, and duties with respect to the conduct of Indian Affairs to the Assistant Secretary of the Interior for Indian Affairs and such other officers and employees of the Department of the Interior as the Secretary may designate. The Secretary may amend and revoke such delegations and may authorize such successive redelegations of such functions, powers, and duties as he may deem desirable. The Secretary may also make such rules and regulations as may be necessary to carry out his functions, powers, and duties with respect to the conduct of Indian Affairs."

(c) All rules, regulations, orders, authorizations, delegations duly issued, made, or taken either by the Secretary of the Interior relating to the Commissioner of Indian Affairs or by the Commissioner of Indian Affairs prior to the effective date of the repeals in subsection (a) of this section shall continue in full force and effect until modified or rescinded by the Secretary of the Interior or his designee and all references therein to the Commissioner of Indian Affairs shall be deemed to be to the Assistant Secretary of the Interior for Indian Affairs.

SEC. 4. Each of the following provisions are amended by deleting the titles "Commissioner of Indian Affairs" and "Commissioner" each time they appear and inserting in lieu thereof in each such instance the title "Secretary of the Interior":

(1) Section 7 of the Act of May 17, 1882 (22 Stat. 88; 25 U.S.C. 3);

(2) Section 464, Revised Statutes (25 U.S.C. 8);

(3) Section 2156, Revised Statutes (25 U.S.C. 229);

(4) Section 5 of the Act of August 15, 1876 (19 Stat. 176, 200; 25 U.S.C. 261);

(5) The provision of section 1 of the Act of March 3, 1901 (31 Stat. 1058, 1066), as amended by section 10 of the Act of March 3, 1903 (32 Stat. 982, 1009; 25 U.S.C. 262);

(6) The penultimate paragraph under the heading "Support of Schools" in section 1 of the Act of June 7, 1897 (30 Stat. 62, 83; 25 U.S.C. 274);

(7) Section 11 of the Act of August 15, 1894 (28 Stat. 313; 25 U.S.C. 286);

(8) The first, tenth, and final paragraphs under the subheading "Commissioner", under the heading "I. General Provisions" in the Act of March 1, 1907 (34 Stat. 1015, 1016, 1018; 25 U.S.C. 288);

(9) The third proviso in the seventh paragraph under the subheading "Commissioner" under the heading "I. General Provisions" in the Act of March 3, 1909 (35 Stat. 781, 783; 25 U.S.C. 289);

(10) Section 1 of the Act of May 29, 1908 (35 Stat. 444; 25 U.S.C. 404);

(11) The final paragraph under the subheading "Secretary" under the heading "I. General Provisions" in the Act of June 21, 1906 (34 Stat. 325, 327; 25 U.S.C. 409);

(12) Section 1 of the Act of May 24, 1950 (64 Stat. 190; 25 U.S.C. 442);

(13) Section 11 of the Act of June 18, 1934 (48 Stat. 984, 986; 25 U.S.C. 471); and

(14) The proviso in section 7 of the Act of March 3, 1875 (18 Stat. 420, 450; 25 U.S.C. 96).

SEC. 5. (a) Section 463, Revised Statutes (25 U.S.C. 2), is amended by deleting the words "The Commissioner of Indian Affairs shall, under the direction of the Secretary of the Interior, and agreeably to" and inserting in lieu thereof "The Secretary of the Interior shall, in accordance with".

(b) Sections 2, 3, and 4 of the Act of June 26, 1892 (27 Stat. 272, 273; 25 U.S.C. 5, 6, and 7), are amended by deleting the title "Commissioner of Indian Affairs" each time it appears and inserting in lieu thereof in each instance the title "Secretary of the Interior" and by deleting the words "said office" each time they appear and inserting in lieu thereof in each such instance the words "the Bureau of Indian Affairs". Section 3 of such Act is further amended by deleting the words "the Commissioner thereof" and the words "such Commissioner" and inserting in lieu thereof in each such instance the words "the Secretary". Section 4 of such Act

is further amended by deleting the words the "Commissioner's certificate" and by deleting the words "the Commissioner" each time they appear and inserting in lieu thereof in each such instance the words "the Secretary".

(c) The Act of April 30, 1908 (35 Stat. 70; 25 U.S.C. 12, 52, and 295), as amended is further amended (1) under the heading "I. General Provisions" and the subheading "Secretary", in the second paragraph by deleting the words "under the jurisdiction of the Commissioner of Indian Affairs" and inserting in lieu thereof "of the Bureau of Indian Affairs," and (2) under the same heading and under the subheading "Commissioner", in the tenth paragraph, by deleting the words "the Commissioner of Indian Affairs" the first time they appear and inserting in lieu thereof the words "the Secretary of the Interior" and by deleting the words "subject to the supervision of the Secretary of the Interior" and in the fourteenth and last paragraph thereof, by deleting the words "the Commissioner of Indian Affairs" each time it appears and inserting in lieu thereof in each such instance the words "the Secretary of the Interior".

(d) Section 1 of the Act of February 14, 1920 (41 Stat. 408, 414; 25 U.S.C. 53), in the second paragraph under the heading "Advertisement for Sale of Indian Lands (Reimbursable)" is amended by deleting the words "any disbursing agent of the Indian Service, with the approval of the Commissioner of Indian Affairs, may authorize a clerk employed in his office to act in his place" and insert in lieu thereof the words "any disbursing agent of the Bureau of Indian Affairs, with the approval of the Secretary of the Interior, may authorize a clerk employed in his office to act in his place".

(e) Section 2103, Revised Statutes, as amended (25 U.S.C. 81), is further amended by deleting the words "the Secretary of the Interior and the Commissioner of Indian Affairs" and inserting in lieu thereof "the Secretary of the Interior" and by further deleting the words "the Commissioner and the Secretary" and inserting in lieu thereof "the Secretary."

(f) Section 2104, Revised Statutes (25 U.S.C. 82), is amended by deleting the words "filed with the Commissioner of Indian Affairs" and inserting in lieu thereof "filed with the Secretary of the Interior" and by further deleting the words "the Secretary of the Interior and the Commissioner of Indian Affairs shall determine therefrom whether, in their judgment," and inserting in lieu thereof "the Secretary of the Interior shall determine therefrom whether, in his judgment."

(g) Section 2106, Revised Statutes (25 U.S.C. 84), is amended by deleting the words "the consent of the Secretary of the Interior and the Commissioner of Indian Affairs" and inserting in lieu thereof "the consent of the Secretary of the Interior."

(h) Section 4 of the Act of August 15, 1894 (28 Stat. 286, 312; 25 U.S.C. 99), is amended by deleting the words "the Commissioner of Indian Affairs is authorized to advertise in the spring of each year for bids, and to enter into contracts, subject to the approval of the Secretary of the Interior, for goods and supplies for the Indian Service" and inserting in lieu thereof "the Secretary of the Interior and the Secretary of Health, Education, and Welfare are each authorized to advertise in the spring of each year for bids, and to enter into contracts for goods and supplies for the Bureau of Indian Affairs and the Indian Health Service respectively,".

(i) The ninth paragraph under the heading "Miscellaneous" in section 1 of the Act of March 3, 1893 (27 Stat. 612, 631), as amended (25 U.S.C. 178), is further amended by deleting the words "said fees shall be paid by the Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, on an account stated by the proper land officers through the Commissioner of the General Land Office" and inserting in lieu thereof "said fees shall be paid by the Secretary of the Interior from funds appropriated for the administration of Indian Affairs."

(j) Section 2133, Revised Statutes, as amended (25 U.S.C. 264), is further amended by deleting the words "unless first licensed so to do by the Commissioner of Indian Affairs, under and in conformity to regulations to be established by the Secretary of the Interior" and inserting in lieu thereof "unless first licensed so to do by the Secretary of the Interior".

(k) The second paragraph under the heading "Support of Schools" in section 1 of the Act of April 21, 1904 (33 Stat. 189, 211; 25 U.S.C. 292), is amended to read as follows: "The Secretary of the Interior may suspend or discontinue any reservation Indian school whenever he deems such action necessary or desirable".

(l) The fourth paragraph under the subheading "Commissioner" under the heading "I. General Provisions" in the Act of June 21, 1906 (34 Stat. 325, 328; 25 U.S.C. 302), is amended by deleting the words "The Commissioner of Indian

Affairs, under the direction of the Secretary of the Interior," and inserting in lieu thereof "The Secretary of the Interior".

(m) Section 3 of the Act of February 8, 1887 (24 Stat. 388, 389), as amended (25 U.S.C. 333), is further amended by deleting the words "to the Commissioner of Indian Affairs, in duplicate, one copy to be retained in the Indian Office and the other to be transmitted to the Secretary of the Interior for his action, and to be deposited in the General Land Office" and inserting in lieu thereof "in duplicate to the Secretary of the Interior for his action, one copy to be retained in the Bureau of Indian Affairs and one copy to be deposited with the Bureau of Land Management."

(n) The second proviso in the nineteenth paragraph of section 1 of the Act of August 1, 1914 (38 Stat. 528, 586; 25 U.S.C. 376), is amended by deleting the words "the Secretary of the Interior or the Commissioner of Indian Affairs" and inserting in lieu thereof "the Secretary of the Interior."

(o) The third paragraph of section 1 of the Act of April 4, 1910 (36 Stat. 269, 270; 25 U.S.C. 383), is amended by deleting the words "submitted by the chief irrigation engineer in the Indian Service and approved by the Commissioner of Indian Affairs and the Secretary of the Interior" and inserting in lieu thereof "approved by the Secretary of the Interior,".

SEC. 6. The following provisions are hereby repealed:

(1) The eleventh paragraph under the subheading "Commissioner" under the heading "I. General Provisions" in the Act of March 3, 1909 (35 Stat. 781, 783; 25 U.S.C. 10);

(2) The paragraph with the subheading "Indian Agents—Proviso" under the heading "II. General Officers and Employees" in the Act of March 1, 1907 (34 Stat. 1015, 1020; 25 U.S.C. 66);

(3) Section 2109, Revised Statutes (25 U.S.C. 146);

(4) Section 10 of the Act of March 2, 1889 (25 U.S.C. 980, 1003; 25 U.S.C. 272);

(5) The last proviso in the seventh paragraph under the heading "Current and Contingent Expenses" in the Act of March 3, 1905 (33 Stat. 1048, 1049; 25 U.S.C. 272a);

(6) The section paragraph under the subheading "President" under the heading "I. General Provisions" in the Act of June 21, 1906 (34 Stat. 325, 326; 25 U.S.C. 279);

(7) The tenth paragraph of section 18 of the Act of June 30, 1913 (38 Stat. 77, 96; 25 U.S.C. 285); and

(8) The last proviso in the third paragraph of section 1 of the Act of April 4, 1910 (36 Stat. 269, 271; 25 U.S.C. 384).

SEC. 7. Nothing in this act shall diminish or repeal any of the authorities transferred to the Surgeon General of the United States or to the Secretary of the Department of Health, Education, and Welfare pursuant to the Act of August 5, 1954 (68 Stat. 674; 42 U.S.C. 2001–2004).

BACKGROUND

The Bureau of Indian Affairs was created on March 11, 1824, by order of the Secretary of War. The Congress, by the Act of July 9, 1832 (4 Stat. 564) created the position of Commissioner of Indian Affairs, to be appointed by the President with the advice and consent of the Senate, under the direction of the Secretary of War. Under the Act of March 3, 1849 (9 Stat. 395), the supervision of the Bureau of Indian Affairs was transferred from the Secretary of War to the Secretary of the Interior.

Until recently, the BIA was on a lower administrative level than the six major land and natural resources offices within the Department of the Interior which are headed by Assistant Secretaries. This position relegated the Commissioner of Indian Affairs to report to the Secretary through an Assistant Secretary such as the Assistant Secretary for Public Land Management. Because of this lower administrative positioning, Indian matters had to compete with land and natural resources on a day-to-day basis within the Department and for the attention of the Secretary. The result of this positioning of Indian matters within the Department has had two major detrimental effects.

First, it has aggravated the inherent conflicts of interest which exist in the Federal administration of Indian affairs. As trustee of Indian property, the United States is charged with a high fiduciary duty to protect and preserve Indian trust assets. Yet the Department of the Interior is also called upon to administer the Nation's resources, such as water, power, lands, timber, oil and minerals for the

greatest common good. When these non-Indian national interests come into conflict with Indian trust interests, all too often the Indian interest is sacrificed or compromised in favor of the non-Indian interest.

Second, despite the fact that the Bureau of Indian Affairs is a unique office within the Department because it deals with the direct human concerns of the nation's first Americans, the visibility and importance of Indian matters within the Department remained at a lower level than land, water, natural resources and power concern.

As a result of recent departmental administrative action, the status of the BIA has been raised commensurate with the six major offices in the Department, thus allowing the Commissioner to report directly to the Secretary on the same basis as the six Assistant Secretaries. The proposed bill would raise the Commissioner's status in title as well, thus demonstrating Congress ratification and support of the Department's administrative action. The bill would create a new Assistant Secretary of the Interior for Indian Affairs, reporting directly to the Secretary and would abolish the existing position of Commissioner of Indian Affairs. Enactment of the bill would ameliorate the conflicts of interest which have plagued Indian affairs and would raise Indian affairs in the Department to its proper level.

The new Assistant Secretary will be able to focus his attention solely upon the unique problems of Indians. The new Assistant Secretary will be able to work full time with the Indians toward the improvement of their economic and social conditions, and assist in the development of their full potential, which would benefit both the Indians and the Nation. One of the primary responsibilities of the new Assistant Secretary will be to help guide the implementation of the National policy of Indian self-determination set forth in the Indian Self-Determination Act which was recently enacted into law.

SECTION-BY-SECTION ANALYSIS OF H.R. 8536 AND H.R. 11258

Section 1 provides for the creation of one additional Assistant Secretary of the Interior for Indian Affairs.

Section 2 amends 5 U.S.C. 5313 (18) by providing for seven Assistant Secretaries of the Interior rather than the present six.

Section 3(a)(1) repeals the executive pay schedule at level 5 of the Commissioner of Indian Affairs (5 U.S.C. 5316(45)).

Section 3(a)(2) repeals the position of Commissioner of Indian Affairs (25 U.S.C. 1).

Section 3(a)(3) repeals the power of the Secretary to appoint Assistant or Deputy Commissioners of the BIA.

Section 3(b) amends 25 U.S.C. 1(a) (authorizing the Secretary to delegate Indian Affairs matters to the Commissioner, and the Commissioner to redelegate his functions to subordinates) by authorizing the Secretary to delegate his functions to the Assistant Secretary for Indian Affairs, and any other employee of the Department.

Section 3(c) provides that all rules, delegations, etc. issued prior to this act by the Secretary relating to the Commissioner, shall remain in effect, and thereafter, all references to the Commissioner shall be deemed to be to the Assistant Secretary for Indian Affairs.

Section 4 amends several sections of title 25 by deleting "Commissioner of Indian Affairs" each time they appear and inserting in lieu thereof, "Secretary of the Interior."

Section 5 amends several sections of title 25 to provide for the situation where other changes are necessary to reflect the transfer of a duty or responsibility to the Secretary from the Commissioner.

Section 6 provides for the repeal of certain provisions in title 25 which have been identified as obsolete, but which do not specifically relate to the creation of an Assistant Secretary for Indian Affairs.

Mr. MEEDS. The bills provide for an additional Assistant Secretary of the Interior who will be responsible for Indian affairs. This subcommittee has considered the subject of this legislation since 1973 and the proposal retains the support of the administration and the Indian community. As a result of this continuing support and the record of past years' hearings, this hearing will be rather brief.

The proposed bills are a recognition of the lack of an effective Indian voice in the Department on an equal footing with the existing Assistant Secretaries who manage the Nation's natural resources Historically, this lack of an effective voice in Indian affairs has relegated Indian matters in the Department to an inferior position as compared to the other six major offices in the Department. Often, the interests of Indians are in direct conflict with the interests of the other Bureaus in the Department. Most importantly, however, is that this situation has exacerbated the inherent conflicts of interest which exist when Indian affairs compete with other Interior matters for the attention of the Secretary.

The Department of the Interior has administratively raised the status of the BIA and the Commissioner to a level commensurate with the other major offices in the Department—thus placing the Commissioner on an equal footing with the six Assistant Secretaries. This action has had the effect of allowing the Commissioner to report directly to the Secretary, rather than through the Public Land Management Office. The proposed bills would raise the Commissioner's status in title as well, thus demonstrating Congress ratification and support of the Department's administrative action.

Furthermore, enactment of this proposal would demonstrate Congress resolve that henceforth, the one office in the Department of the Interior which deals directly with the human concerns of a segment of our Nation's citizenry will not be relegated to a status of lesser importance than an office which is concerned with natural resources. It is the belief of all interested parties that these bills would help to ameliorate the conflicts of interest which have plagued Indian affairs by raising Indian affairs to its proper level in the Department.

H.R. 4344 was introduced by Congressman Young; H.R. 8536 was introduced by him after receipt of the executive communication. H.R. 11258 by Congressman Clausen incorporates a minor amendment to the Department's proposed bill.

The bills reflect the desire expressed by Indians that the new Assistant Secretary should be specifically designated as solely responsible for Indian affairs. The law will repeal the position of Commissioner of Indian Affairs, and the power of the Secretary to appoint Assistant or Deputy Commissioners of the BIA. The bills amend several sections of title 25 to provide for the situation where other changes are necessary to reflect the transfer of a duty or responsibility to the Secretary from the Commissioner.

Finally, the latter bills repeal certain provisions of title 25 which the Department has identified as obsolete, but these provisions do not specifically relate to the creation of an Assistant Secretary for Indian Affairs. I am concerned about the advisability of considering at this time the provisions of the bill which purport to clean up title 25. I am inclined to believe that this should be left with the American Indian Policy Review Commission for recommendations of comprehensive, rather than piecemeal, changes.

Additionally, I will be very much interested in the testimony of the administration witness concerning the Secretary's present power affirmed by this bill to delegate his duties and functions in Indian affairs to some other agency or officer in the Department, other than the BIA and the Commissioner.

One of the sponsors of the legislation is with us this morning, and the Chair will recognize the gentleman from California, Mr. Clausen, for an opening statement.

STATEMENT OF HON. DON H. CLAUSEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. CLAUSEN. I want to thank the chairman for affording the opportunity to follow on your comments.

Let me state for the record, Mr. Chairman, that I speak for all of the members of the committee who have the opportunity to deal with Indian affairs.

You, sir, have demonstrated a high degree of compassionate leadership serving as the chairman of this committee which is generally appreciated not only by the people in your district, but, more importantly, by those who have worked with you. There has been a tendency to overlook our Native Americans or just keep some of these people as wards of the Government. I want to express openly and publicly and on the record my appreciation to you for your efforts to reverse this.

Mr. MEEDS. Thank you.

Mr. CLAUSEN. I am going to ask unanimous consent that I be permitted to insert my full statement in the record as though read so I won't have to take up that much time.

Mr. MEEDS. Without objection, so ordered.

[The statement referred to is as follows:]

STATEMENT BY HON. DON H. CLAUSEN OF THE STATE OF CALIFORNIA BEFORE THE HOUSE SUBCOMMITTEE ON INDIAN AFFAIRS, MARCH 4, 1976.

Mr. Chairman and members of the subcommittee: I appreciate the opportunity to express my views on the bills before you today which would establish within the Department of the Interior the position of Assistant Secretary for Indian Affairs. As a sponsor of one of these, H.R. 11258, I want to emphasize my firm belief in the merit of this legislation and my wholehearted support for it.

The purpose of this legislation is to upgrade the position of the Commissioner of Indian Affairs to that of an Assistant Secretary and to eliminate the position of Commissioner. I think it is time for the Commissioner to enjoy a status commensurate with his duties and responsibility.

When Secretary of War John C. Calhoun created the Bureau of Indian Affairs in 1824, it consisted of a three-man secretariat which handled routine correspondence and other business pertaining to Indian matters. In 1832 Congress created the position of Commissioner of Indian Affairs to have responsibility for the direction and management of all Indian affairs and of all matters arising out of Indian relations. Today, the bureau which he heads has an annual budget in excess of $700 million and more than 12,000 employees. They administer a wide range of programs of vital importance to the well-being of the approximately 550,000 American Indians and Alaska Natives who live on some 260 reservations in the lower 48 States and in more than 200 remote villages in Alaska. In addition to his administrative tasks, the Commissioner serves as chief policy spokesman and advocate within the Department for Indian interests. As such, he should occupy a policy level status equal to the six other Assistant Secretaries in the Department.

Establishing an Assistant Secretary for Indian Affairs is not a new idea nor is it controversial. The administration proposed such a measure in 1970 as part of a legislative program designed to implement its new policy of self-determination for America's Native people. The 91st and 92d Congresses did not act on the proposal. In the 93d Congress, the House and Senate each passed an Assistant Secretary bill by wide margins. However, the Senate saddled its version with a nongermane amendment that led to the bill's death when the House rejected the conference report.

The legislation before this subcommittee today affords the Congress a unique opportunity. By enacting it the Congress can give special recognition to our first citizens by upgrading the official status of their chief spokesman in the Federal Government. To do so would not only be appropriate during our Nation's Bicentennial, but also would serve to further emphasize congressional support for the policy of self determination for American Indians and Alaska Natives.

I must state for the record that many of the Indians in my district have expressed great dissatisfaction with the manner in which the Bureau of Indian Affairs has handled Indian problems and concerns. They do not feel that the agency has been responsive to the desires, goals and objectives of the Indian community.

We in the Congress must exercise a greater degree of oversight and review of all Indian affairs and the manner in which the agency administers the programs under its jurisdiction.

There seems to be a lack of input from the Indian community and just as this committee established The American Indian Policy Review Commission for purposes of investigating and evaluating Indian programs, I am supporting the creation of an Assistant Secretary for Indian Affairs in the hope that we can elevate this position of responsibility to a higher recognition of the plight of our friends.

As a member of the House Interior and Insular Affairs Committee, I want to admonish my colleagues of the need for all of us to be more vigilant in our oversight and review responsibility so we can make the kind of meaningful changes needed to meet the aspirations of all Indians.

Mr. CLAUSEN. I will highlight some of the points.

Establishing an Assistant Secretary for Indian Affairs is not a new idea nor is it controversial. The administration proposed such a measure in 1970 as part of a legislative program designed to implement its new policy of self-determination for America's native people. The 91st and 92d Congresses did not act on the proposal. In the 93d Congress, the House and Senate each passed an Assistant Secretary bill by wide margins. However, the Senate saddled its version with a nongermane amendment that led to the bill's death when the House rejected the conference report.

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I must state for the record that many of the Indians in my district have expressed great dissatisfaction with the manner in which the Bureau of Indian Affairs has handled Indian problems and concerns. They do not feel that the agency has been responsive to the desires, goals, and objectives of the Indian community.

We in the Congress must exercise a greater degree of oversight and review of all Indian affairs and the manner in which the agency administers the programs under its jurisdiction.

Parenthetically, this will coincide, Mr. Chairman, with the legislative proposal to establish the Indian Policy Review Commission. I think all of this is going to be of benefit.

There seems to be a lack of input from the Indian community and just as this committee established the American Indian Policy Review Commission for purposes of investigating and evaluating Indian programs, I am supporting the creation of an Assistant Secretary for Indian Affairs in the hope that we can elevate this position of responsibility to a higher recognition of the plight of our friends.

As a member of the House Interior and Insular Affairs Committee, I want to admonish my colleagues of the need for all of us to be more vigilant in our oversight-and-review responsibility so we can make the kind of meaningful changes needed to meet the aspirations of all Indians.

Thank you, Mr. Chairman.

Mr. MEEDS. I thank the gentleman from California.

The first witness this morning is the Honorable John Kyl, Assistant Secretary for Congressional and Legislative Affairs, Department of the Interior, a former colleague and friend.

Welcome, John. We have not seen you for a while.

STATEMENT OF HON. JOHN KYL, ASSISTANT SECRETARY FOR CONGRESSIONAL AND LEGISLATIVE AFFAIRS, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY RALPH REESER OF THE BUREAU OF INDIAN AFFAIRS

Mr. KYL. It is a pleasure to be here. I have with me Mr. Ralph Reeser of the Bureau of Indian Affairs.

Because my very brief opening statement is simply a repetition, really, of what the chairman said in his remarks, if it pleases the committee I would simply insert that into the record and proceed to your questions.

Mr. MEEDS. Without objection, your prepared statement will be made a part of the record.

[The prepared statement referred to is as follows:]

STATEMENT OF JOHN KYL, ASSISTANT SECRETARY OF THE INTERIOR FOR CONGRESSIONAL AND LEGISLATIVE AFFAIRS, BEFORE THE SUBCOMMITTEE ON INDIAN AFFAIRS OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS, U.S. HOUSE OF REPRESENTATIVES, MARCH 4, 1976

Mr. Chairman, it is a pleasure to be here today to testify on this administration proposal in the area of Indian affairs which was first made in the President's Indian message of July 8, 1970.

The bills are H.R. 4344, H.R. 8536, and H.R. 11258. Each of the bills would create an additional Assistant Secretary in the Interior Departmet to be designated as the Assistant Secretary of the Interior for Indian Affairs. This Assistant Secretary would take the place of the Commissioner of Indian Affairs, whose post would be eliminated by this legislation. The duties of the new Assistant Secretary would be the same as the Commissioner's—the supervision of the Bureau of Indian Affairs.

We believe that enactment of legislation creating this position will more properly recognize the importance of the Department's responsibility for Indian affairs and will by law place it at a more appropriate level within the structure of the Department. The new Assistant Secretary will work full time with Indians to improve their economic and social conditions and assist in the development of their full potential, both for their own and the Nation's benefit. One of the primary responsibilities of the new Assistant Secretary will be to help guide the implementation of the new national policy of Indian self-determination which was reaffirmed and enacted into law in the Indian Self-Determination and Education Assistance Act.

Our letter to the speaker of May 15, 1975, and our March 2, 1976, letter responding to the chairman of this subcommittee discuss the details of the Assistant Secretary bills and we will be pleased to respond to any further questions.

This concludes my statement.

Mr. KYL. Mr. Chairman, you did mention your attitude on title 25. In the final paragraph of the letter from the Department to you, to

the chairman, we noted your desire to refer the amendments, repeals, and other provisions to the American Indian Policy Review Commission Task Force on Law Revision, Consolidation, and Codification. In the letter we stated that should the committee decide to take this route, we will assist in any way possible. We do not object to this change in our proposal.

Mr. MEEDS. Thank you. That was my first question.

Are you testifying now, John, on behalf of the Department unequivocally for the creation of the position of Assistant Secretary of Interior for Indian Affairs, or Deputy Under Secretary for Interior, whose function will be for Indian affairs?

Mr. KYL. If I understood your question, sir, the former.

Mr. MEEDS. I am not trying to draw a distinction. Let me repeat my question, and I will preface it by telling you that we have had indications down in the Department of Interior that there are some other proposals with regard to creation, for instance, of the Deputy Under Secretary for Indian Affairs and Parks.

Now, with that background, let me again state the question:

Are you testifying unequivocally on behalf of the administration, the Department of the Interior, for the creation of an Assistant Secretary of Interior whose function will be Indian affairs?

Mr. KYL. I am, Mr. Chairman, testifying in favor of the proposal to establish an additional Assistant Secretary in the Interior Department to be designated as the Assistant Secretary of the Interior for Indian Affairs.

I obviously am going to have to do some checking and get a communication back to the committee, because in absolute honesty, the first time I have ever heard of the other proposal which the gentleman mentioned was a few minutes ago in this room, when Mr. Reeser asked me if I knew anything about this. My answer to him then, and to you now, is that I had never heard one single word about it. Obviously. I should clarify that matter for you.

Mr. MEEDS. Well, specifically, we have been informed that Mr. Frizzell, who is presently the Under Secretary of Interior, is proposing to establish a position of Deputy Under Secretary for Indian Affairs and Parks. I would appreciate it if you would check that out and get back to us before we close the hearing record, and respond specifically to this question: "Is this being considered, and if so, what are the ramifications, and what effect does it have on the present testimony?"

If you will reply to us by mail before we close the hearing record, I would appreciate it.

Mr. KYL. Thank you, sir. We shall do so.

[The information referred to is as follows:]

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., March 4, 1976.

Hon. LLOYD MEEDS,
Chairman, Subcommittee on Indian Affairs, House Committee on Interior and Insular Affairs, House of Representatives, Washington, D.C.

DEAR MR. MEEDS: In response to your request at the subcommittee hearing this morning, I am pleased to provide you with the following information about the Office of the Under Secretary in the Interior Department.

I have three individuals in my office who serve as Deputy Under Secretaries. All these positions are staff and advisory to me; I am the one with the direct responsibility for working with Secretary Thomas Kleppe in carrying out his policies with and through the line organizations of the Department.

I have recruited Dennis Ickes of the Justice Department to serve as one of these Deputy Under Secretaries. Ickes' employment in my office begins March 7, 1976. He of course will also be working in the same type of staff capacity aforementioned. He will help me with numerous matters, including among other things, Equal Employment Opportunity, Indian Affairs, and Territorial Affairs. I have known and worked with Dennis Ickes since I served as Assistant Attorney General for Land and Natural Resources. I have great respect for his competence and integrity, and I know Dennis will make a significant contribution to the important missions of the Interior Department.

The administration is totally in support of the proposals to create an additional Assistant Secretary in the Interior Department, to be designated as the Assistant Secretary of Interior for Indian Affairs. The creation of this position will more accurately reflect the Department's responsibility to Indians and the place that this responsibility occupies within the structure of the Department. The new Assistant Secretary for Indian Affairs will function on the same basis as do the six existing Assistant Secretaries of the Department.

With best regards, I am,

Sincerely,

KENT FRIZZELL,
Under Secretary.

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
U.S. HOUSE OF REPRESENTATIVES,
Washington, D.C., March 10, 1976.

Hon. KENT FRIZZELL,
Under Secretary,
Department of Interior,
Washington, D.C.

DEAR MR. FRIZZELL: As you are aware, the subcommittee did discuss the rumor that a new Deputy Under Secretary for Indian Affairs was in the offing. Your confirmation or that rumor still does not quiet my concern about the intentions behind such an appointment, nor does it satisfy my curiosity about the relationship that such an official will have vis-a-vis the Commissioner of Indian Affairs. Most specifically, I do not understand the administration's continued "total support" of the Assistant Secretary of the Interior for Indian Affairs bill in light of that appointment. Consequently, I would appreciate a response to the following inquiry.

(1) What will be the specific duties of the Deputy Under Secretary with regard to Indian Affairs?

(2) What is the reasoning behind the creation of such a position in light of the intent of the Assistant Secretary bill which is to provide for a person whose duties are exclusively Indian Affairs with a direct access to the Secretary?

(3) Another intent of the Assistant Secretary bill was to remove the conflicts of interest which existed when the Commissioner had to report to the Secretary whose duties often conflicted with the interests of Indians. How will this conflict of interest be remedied if there are other officials within the Department who have authorities in Indian matters and have access to the Secretary?

(4) In the Department's "chain of command," what will be the Deputy Under Secretary's authority vis-a-vis the Commissioner of Indian Affairs?

(5) Are there any duties which relate to Indian affairs which are contemplated to be delegated to the Deputy Under Secretary, rather than the Commissioner?

(6) With regard to Indian affairs, is there any matter which may be delegated to the Commissioner which must be also approved by the Deputy Under Secretary?

(7) What will be the extent of the Deputy Under Secretary's authorities in Indian affairs?

(8) Are there any powers, duties, or functions which are presently within the jurisdiction of the Commissioner which will be transferred to the Deputy Under Secretary?

As a result of the appointment of Mr. Ickes as Deputy Under Secretary and the subcommittee's hearings on the Assistant Secretary bill, I would appreciate a complete report concerning the need for both of the referenced positions, how they relate to each other within the Department, and the justification for the continuing need for an Assistant Secretary position. Your answers to my questions will be appreciated.

Sincerely,

LLOYD MEEDS, *Chairman,*
Indian Affairs Subcommittee.

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., March 26, 1976.

Hon. LLOYD MEEDS,
Chairman, Indian Affairs Subcommittee,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your March 10, 1976 letter inquiring about the duties of my staff, how those duties affect the authority of the Commissioner of the Bureau of Indian Affairs, and how my staff appointments may affect the proposed position of Assistant Secretary of the Interior for Indian Affairs. You and I discussed this matter at our March 15 meeting in your office. Nonetheless, I am submitting the following for your further information.

As general background, the number of deputies in the Office of the Under Secretary and their individual responsibilities has varied with each Under Secretary. Since 1966, the Under Secretary has had from one to three deputies serving on his staff. As I indicated in my March 4 letter, I recruited Dennis Ickes to serve as one of three Deputy Under Secretaries currently in this office. I have not created a new position, but rather I am filling one of these positions.

All of the Deputy Under Secretary positions are staff and advisory to the Under Secretary. There is no position in this office denominated as Deputy Under Secretary for Indian Affairs. Mr. Ickes' duties as Deputy Under Secretary will include policy formulation, program appraisal and formulation, and strategy and justification of programs involving various organizational segments of the Department of the Interior, including, among others, Territorial Affairs, Equal Opportunity, and the Bureau of Indian Affairs. Mr. Ickes will work for and represent me in conferences, in committee meetings, in meetings and conferences with representatives of other departments and agencies, with Members of Congress, with State, local, and tribal governments, with private firms, and with individuals having business with the Department of the Interior on matters which I assign to him. None of his responsibilities will detract from or otherwise limit the authority of the Commissioner for the Bureau of Indian Affairs, nor will any Deputy Under Secretary's duties in any way affect the Commissioner's relationship to the Secretary of the Interior. This same relationship as to the Commissioner of the Bureau of Indian Affairs would apply to the proposed position of Assistant Secretary of the Interior for Indian Affairs.

You can see from the foregoing discussion concerning my Deputy Under Secretaries that these staff advisory positions have no effect upon the "chain of command" for the Department of the Interior. Neither the current position of the Commissioner for the Bureau of Indian Affairs, nor the proposed position of Assistant Secretary of the Interior for Indian Affairs, would be responsible to a Deputy Under Secretary. As has been the frequently stated position of the Department, the proposed Assistant Secretary of the Interior for Indian Affairs would be responsible to the Secretary in the same manner as are the six existing Assistant Secretaries of the Department.

With best regards, I am,

Sincerely,

KENT FRIZZELL, *Under Secretary.*

Mr. MEEDS. Mr. Kyl, what is your understanding of the present authority of the Secretary of the Interior's delegatory powers within the Department with regard to matters affecting Indians? Can he delegate it to any of the different agencies or bureaus within the Department, or must he delegate it only to the Bureau of Indian Affairs?

Mr. KYL. It is our opinion, sir, that the Secretary of the Interior has the authority to delegate matters of Indian affairs to the Commissioner, and that he also has the authority to delegate certain activities to other areas of the Department.

For instance, at the present time, there are delegations of authority to do work for the BIA for the Indian community in the Geological Survey, Bureau of Land Management, the National Park Service. These are technical assistance propositions; for instance, the Park Service in matters of archeology, preservation, et cetera, the Geological

Survey in mineral search, and things of that nature, BLM in matters of allotment, surveys, et cetera—that category, as I say, is one of technical service.

The only one which does not fit that same title exactly is the delegation to and the work of the Board of Hearings and Appeals, whose primary load, I believe, is that of probates. There are, however, appeals presented to this three-man board of Administrative Law Judges, appeals from administrative decisions of the Commissioner, or appeals of administrative decisions by area directors when the Commissioner determines that he would rather have those appeals go directly to the Board.

They also deal sometimes with matters of eligibility, of leases. I know of one case in which the appeal is brought by a non-Indian because of a lease action in which he claims that the individual in the tribe making the decision had no authority from the tribe. In that category, it is not purely a technical matter, but a quasi-judicial matter.

Mr. MEEDS. What would your opinion be if the Frizzell proposal I have just stated occurred as a fact, and legislation in which reservation land and park land were to be in conflict, such as the Havasupai bill which we considered this year, What would happen in that instance?

Mr. KYL. Is your question, sir, what would happen if we had an Assistant Secretary for Indian Affairs and a Deputy Under Secretary some way related?

Mr. MEEDS. Yes; a Deputy Under Secretary for Indian Affairs and National Parks and an Assistant Secretary for Indian Affairs. What would happen with a proposal like the Havasupai proposal last year?

Mr. KYL. I think my friend realizes that is a little difficult to answer, because I have not contemplated any such situation. We do not have, as a matter of fact, to the best of my knowledge, any Deputy Under Secretaries which have specific authority anywhere.

Mr. MEEDS. Well, who has more authority, a Deputy Under Secretary, or an Assistant Secretary?

Mr. KYL. The Assistant Secretary.

I have to expand a little further on this, too. An Under Secretary, under any Secretary in any Department of the administration, is what the Secretary wants him to be at any time.

There are occasions when a Secretary makes the Under Secretary the housekeeper, the management specialist of the Department, to take care of personnel, to take care of buildings and grounds and so on. There are other occasions in which the Secretary gives the Under Secretary specific duties to perform.

In the case of our present Secretary, Mr. Kleppe, and his Under Secretary we have this situation. The Secretary says that so far as he is concerned the Under Secretary is in the same box on the organization chart with him and that, therefore, instead of working on separate issues, et cetera, with separate responsibilities, that they work together, and that the Secretary calls on the Under Secretary for assistance whenever that assistance is essential. But that relationship differs, and therefore there could be no really definitive response to your question.

Mr. MEEDS. But the Under Secretary gets his authority directly from the Secretary, does he not?

Mr. KYL. Yes, sir.

Mr. MEEDS. And the Assistant Secretary often may get his authority from a Deputy, or from another Secretary, may he not?

Mr. KYL. I have to respond in this fashion there, sir. Actually, under various laws, the different Assistant Secretaries have specific missions to perform. Under some of those laws, the Secretary must even act through the Assistant Secretary. We just finished work on a piece of legislation relative to game ranges in which that matter was very simply clarified.

Ordinarily, the Secretary is the final arbiter. He is the one who makes the ultimate decision when there is any question in the Department involving differences of opinion among the various offices.

Mr. MEEDS. Well, what I am really trying to get to, and I will ask your opinion on this after stating my own, is this: It seems to me it would be inconsistent to be in favor of an Assistant Secretary who has a responsibility for Indian affairs and the creation of a Deputy Under Secretary for Indian Affairs and National Parks.

What is your impression of that?

Mr. KYL. Well, at the moment, I think we probably have a hypothetical situation, and therefore, again, it is difficult for me to respond.

If we create an Assistant Secretary for Indian Affairs, and that Assistant Secretary for Indian Affairs is to report directly to the Secretary, then, of course, the Secretary is his boss, purely and simply. Is that responsive, sir?

Mr. MEEDS. Well, it doesn't really answer the second part of the question.

Mr. KYL. Let me try again, then, because I do want to be responsive to you.

Would you please repeat the question so that I might try to be more explicit?

Mr. MEEDS. I say it seems inconsistent to me to be in favor of an Assistant Secretary of the Interior for Indian Affairs and in favor of a Deputy Under Secretary for Indian Affairs and National Parks. That seems inconsistent to me. How do you feel?

Mr. KYL. I can understand your conclusion, but the premise is hypothetical.

Mr. MEEDS. Well, I can understand your position.

Mr. KYL. Please understand that I have never even heard of this thing. Now, I do have daily conferences with the Secretary, the Under Secretaries and so forth. We have weekly meetings, and goodness knows we have a plethora of memos and up to this point I have no inkling that anything of this type transpires.

Mr. MEEDS. I have no further questions.

Thank you very much.

Mr. KYL. Thank you.

Mr. MEEDS. Our next witness is Mr. Trimble, who is executive director of the National Conference of American Indians.

STATEMENT OF CHARLES TRIMBLE, EXECUTIVE DIRECTOR, NATIONAL CONGRESS OF AMERICAN INDIANS

Mr. TRIMBLE. Good morning, Mr. Chairman. It is a pleasure to testify. My statement will be very brief. We have no prepared statement. We have fully stated our position in hearings on this legislation

in previous Congresses, but we support the legislation. We have resolutions supporting it, and those resolutions are on record as well.

It is not the highest matter on NCAI's priority list of legislation or other matters, but we do feel it is important that the Indian affairs achieve the highest strata possible in the Interior Department.

I would like to comment on the proposal which is yet only rumored, but we have fairly good sources of information that have given a great deal of credence to the rumor, that indeed the Under Secretary, Kent Frizzell, intends to establish a Deputy Under Secretary for Indian Affairs position, and that Mr. Dennis Ickes of the Justice Department is the person who is being considered for that position.

Mr. MEEDS. Who?

Mr. TRIMBLE. Mr. Dennis Ickes, I-c-k-e-s, who is now Director of the Indian Civil Rights Division, I believe it is, of the Justice Department.

We hate to get into the area of personalities, but I think it illustrates the problem we are being faced with in this manner, and our concern.

We opposed Mr. Frizzell when it was being strongly rumored that he was being considered for Secretary of the Interior when Hathaway, the Secretary of the Interior, left office, and we expressed our opposition to the Senate and to the Congress.

When he was up for the Under Secretary, we testified in opposition to his confirmation to Under Secretary, and our opposition was based on his performance or lack of performance on some very, very key cases, among them the Walton case of the Colville Tribe, and a number of others that we stated.

We believe that there was some—and we had some very strong discussions with him—and I think he has some feelings that are against the tribe, whether or not these spring from the fact that we opposed him very much.

Mr. MEEDS. Are you talking about Mr. Frizzell or Mr. Ickes?

Mr. TRIMBLE. About Mr. Frizzell. We do feel he has his own agenda, and in one of the conferences with Mr. Frizzell—it concerned transmitting records and documents in a very key case to the Justice Department wherein a member of the Trust Office in the Bureau of Indian Affairs declined to transmit those documents to Justice for fear that Justice was getting ready to take an adversary position against the Indian people and the Bureau of Indian Affairs, being an advocate, with no right to turn documents over to an agency that would be an adversary.

Mr. Frizzell insisted that they be turned over, whereas Justice generally agreed, we felt, with us, that the documents should not be turned over.

In cases like that, Mr. Frizzell was very, very adamant and very angry about the way situations develop.

We feel he has his agenda in Indian Affairs which are not necessarily in compliance with the advocacy position that Mr. Seneca and others in the Bureau are taking now. We are pleased with the stances that they are taking, because they are a counter to Mr. Frizzell. These are our personal feelings, and we feel there is merit to this, that Mr. Frizzell feels he has to bolster his strength against the Bureau of Indian Affairs.

So we would appreciate it if this could be looked into, and we feel if this occurred it would do a lot to compromise the position of strength

that we hope the Commissioner of Indian Affairs will take, with the additional power that he would have as the Assistant Secretary rather than a mere Commissioner.

So, overall, Mr. Chairman, we support the legislation, and we would do whatever we could to assure its passage.

Mr. MEEDS. Thank you very much, Mr. Trimble.

Are you laboring under the belief that Mr. Frizzell, as Under Secretary, could create a position of Deputy Under Secretary for Indian Affairs and National Parks?

Mr. TRIMBLE. Yes.

Mr. MEEDS. Without the permission of the Secretary?

Mr. TRIMBLE. Not without the permission of the Secretary; no.

Mr. MEEDS. Are you under the belief that if we were to pass this bill and then that position were to be created, that there would be a hiatus in that department or what portion of the department had jurisdiction over Indian affairs?

Mr. TRIMBLE. I don't know if there would be a hiatus, and I don't know how official this position could be, but I think it would give him a strong hand in opposition to an Assistant Secretary.

Mr. MEEDS. What is Mr. Frizzell Under Secretary for?

Mr. TRIMBLE. Just Under Secretary. I don't know if there are any designations for Under Secretary.

Mr. MEEDS. What is the consistency of Parks and Indian Affairs? That really escapes me.

Mr. TRIMBLE. I couldn't answer that, sir. I did not realize, and I had not heard that it was for Indian Affairs and Parks. I had understood that it was only for Indian Affairs that the Deputy Under Secretary was being created. I had never heard until you said it that it included parks.

Mr. MEEDS. What do you know about Mr. Ickes?

Mr. TRIMBLE. Mr. Chairman, my own personal feeling is that in the Justice Department in the Office of Indian Civil Rights, that he was a rather weak person, and that there wouldn't be a great loss to the Justice Department if he were transferred.

Mr. MEEDS. That is not even damning him with faint praise.

What is his past, his background? Is he Indian?

Mr. TRIMBLE. No; he isn't. He is the grandson of the famous previous Secretary, Mr. Ickes, who was a very progressive person, during the era of the Indian Reorganization Act. Those are his only credentials, as far as I know. This may have been his first job out of law school.

Mr. MEEDS. How old is he? Do you know?

Mr. TRIMBLE. I would say late twenties or early thirties.

Mr. MEEDS. Does he have any relationship to any persons who donate rather substantially to the Republican Party?

Mr. TRIMBLE. That I could not say, sir. I don't know.

Mr. MEEDS. I don't have any further questions.

Thank you very much.

Mr. TRIMBLE. Thank you very much.

Mr. MEEDS. That will conclude the testimony on the bills to create an Assistant Secretary.

[Whereupon, at 10:45 a.m., the subcommittee proceeded to consideration of other business.]

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